

ORDER NO. 1678

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Review of Commission's Price
Cap Rules

Docket No. RM2013-2

NOTICE OF PROPOSED RULEMAKING
REQUESTING COMMENTS ON PROPOSED COMMISSION RULES
FOR DETERMINING AND APPLYING THE MAXIMUM AMOUNT OF RATE
ADJUSTMENTS

(Issued March 22, 2013)

I. INTRODUCTION

With this Notice of Proposed Rulemaking, the Commission is initiating review of its rules in 39 CFR part 3010 and requesting comments and suggestions to clarify or improve the manner in which part 3010 implements statutory directives and policies previously expressed in Commission orders.

The purposes of this rulemaking are to clarify the Commission's rules for determining and applying the maximum amount of rate adjustments in rate cases before the Commission and to improve other aspects of the process of adjusting rates for market dominant products. The proposed rules are intended to provide more certainty

for the Postal Service and the mailing community as they make decisions that rely upon the Postal Service's authority to adjust rates for market dominant products under 39 U.S.C. 3622(d) and part 3010.

II. BACKGROUND

Five "regular" rate cases have come before the Commission since the promulgation of 39 CFR part 3010.¹ Initially, the Commission's rules in part 3010 were successfully applied in several proceedings without the Postal Service or other parties requesting additional clarification.² However, beginning in 2010, the Commission began to identify circumstances that led to confusion about the correct application of the rules. The following is a summary of the Commission's more recent experiences applying part 3010 in rate cases.

Postal Service request for clarification. On October 6, 2010, in preparation for its upcoming notice of rate adjustment, the Postal Service sought clarification of the application of 39 CFR 3010.26 (relating to the calculation of unused rate adjustment authority) to notices of rate adjustment filed more than 12 months apart and in periods when the CPI-U is in decline.³ The Commission's General Counsel replied to the Postal

¹ See 39 U.S.C. 3622(d)(1)(B). The five cases are: Docket No. R2008-1; Docket No. R2009-2; Docket No. R2011-1; Docket No. R2012-3; and Docket No. R2013-1.

² Docket No. R2008-1, United States Postal Service Notice of Market-Dominant Price Adjustment, February 11, 2008, at 2-5; Docket No. R2009-2, United States Postal Service Notice of Market Dominant Price Adjustment, February 10, 2009, at 2-6. The rules have also been relevant and discussed when the Postal Service proposed discounted rates for summer and winter sales programs. See, e.g., Docket No. R2009-3, Order Approving Standard Mail Volume Incentive Pricing Program, June 4, 2009 at 9-10; Docket No. R2009-4, Order Approving Price Adjustment for Standard Mail High Density Flats, July 1, 2009, at 6-9; Docket No. R2009-5, Order Approving First-Class Mail Incentive Pricing Program, September 16, 2009, at 9; Docket No. R2010-3, Order Approving Standard Mail Volume Incentive Pricing Program, April 7, 2010, at 12-13. Similarly, the effect of a temporary price decrease adjustment for mail with a certain two-dimensional barcode was implemented without a price cap calculation. Docket No. R2011-5, Order Approving Market Dominant Price Adjustment, May 17, 2011.

³ Letter from R. Andrew German, Managing Counsel, Pricing & Product Development, United States Postal Service, to Shoshana Grove Regarding Available CPI-U Authority, October 6, 2010.

Service in a letter providing “informal advice” on the interpretation of part 3010.⁴ A mailer coalition also replied to the Postal Service’s request for interpretation. The coalition suggested that the amount calculated as unused rate adjustment authority when notices of rate adjustments are filed more than 12 months after the previous notice of rate adjustment, should, contrary to the Commission’s view, be applied to reduce the calculated annual limitation on market dominant rate adjustments.⁵

Docket No. R2011-1 and Order No. 606. On November 2, 2010, the Postal Service submitted a notice of rate adjustment, in order to provide pricing incentives for Reply Rides Free and Saturation and High Density Standard Mail and to revise the threshold for the Move Update Assessment Charge.⁶ On November 10, 2010, the Commission issued a Chairman’s Information Request concerning the Postal Service’s calculation of annual limitations and unused rate adjustment authority.⁷ CHIR No. 1 prompted the Postal Service to respond that it was still “uncertain how the rules defining the price cap should be applied.”⁸ The Commission’s Order No. 606 included an extensive discussion of the price cap rules and their application to a situation in which (1) notices of rate adjustment are filed more than 12 months apart; and (2) CPI-U declines.⁹

⁴ Letter from the Commission’s General Counsel in Response to Andrew German, October 12, 2010 (General Counsel’s Letter).

⁵ Response of the Affordable Mail Alliance to October 6 Letter-Petition of the United States Postal Service; October 12 Letter-Ruling of the Office of General Counsel, October 13, 2010 (AMA Response). The letter also expresses procedural concerns with the issuance of the General Counsel’s Letter, arguing that it should not be treated as a definitive or binding ruling of the Commission. *Id.* at 5-8.

⁶ Docket No. R2011-1, United States Postal Service Notice of Market Dominant Price Adjustment, November 2, 2010.

⁷ Chairman’s Information Request No. 1, November 10, 2010 (CHIR No. 1).

⁸ Response of the United States Postal Service to Questions 1-3 of Chairman’s Information Request No. 1, November 16, 2010, at 2.

⁹ Docket No. R2011-1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules (Order No. 606), December 10, 2010 at 6-19.

Petition for rulemaking. On the same day, the Commission issued CHIR No. 1, the Postal Service filed a petition for rulemaking regarding unused rate adjustment authority calculations.¹⁰ The Petition for Rulemaking requests “formal clarification of whether 39 C.F.R. 3010.26(c)(1)-(3) or the CPI-U data provided on the Commission’s website determine the amount of unused rate adjustment authority when rate adjustments are more than 12 months apart.” *Id.* at 3. The Commission responded to this request in Order No. 606, which the Commission characterized as “the formal determination sought by the Postal Service in its Petition for Rulemaking.”¹¹ Order No. 606 did not close the docket on the Petition for Rulemaking; instead, it promised to initiate a rulemaking “to avoid future confusion.” *Id.* Because this docket provides an opportunity to address the concerns expressed by the Postal Service in its Petition for Rulemaking, the Commission will now close Docket No. RM2011-2.

Docket No. R2012-3 and Order No. 987. The confusion over the correct application of part 3010 appeared to have abated in the 2012 rate case.¹² The Postal Service correctly calculated the applicable maximum rate adjustments, even though data for the full fiscal year 2011 were not yet available. *Id.* at 2.

Docket No. R2013-1 and Order Nos. 1541 and 1573. In Order No. 1541, the Commission remanded Standard Mail Flats rates and stated that the Postal Service had unused rate adjustment authority available to it from Docket No. R2008-1 and Docket No. R2009-2.¹³ In its response to Order No. 1541, the Postal Service observed that the statement appeared to be at odds with 39 CFR 3010.28 and Order No. 606, which

¹⁰ Petition for Rulemaking Regarding the Calculation of Unused Rate Adjustment Authority, November 10, 2010, Docket No. RM2011-2 (Petition for Rulemaking).

¹¹ Docket No. R2011-1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules, December 10, 2010 (Order No. 606) at 5.

¹² Docket No. R2012-3, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes (Order No. 987), November 22, 2011.

¹³ Docket No. R2013-1, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes (Order No. 1541), November 16, 2012, at 49 n.66.

specified that the unused rate adjustment authority available to the Postal Service in any one rate case is the lesser of two percentage points or the sum of all unused rate adjustment authority from the previous five years.¹⁴ The Commission agreed, recognizing that in situations where the sum of unused rate adjustment authority is negative, “it appears that rule 3010.28 is in conflict with rule 3010.27 and 39 U.S.C. 3622(d)(2)(C)(iii)(III).”¹⁵ The Commission stated that it would initiate a rulemaking to resolve the apparent conflict.

Additional issues arose in Docket No. R2013-1, further indicating the need for clarification of part 3010. Perhaps the most notable of these involved the calculation of the percentage change in rates for particular Standard Mail products. Order No. 1541 at 36 and 45-46. In addition, the Postal Service continued to use projections rather than historical data for certain billing determinants. *Id.* at 17. The Postal Service’s incorporation of promotional prices into the calculation of the percentage change in rates led to commenter requests that promotional pricing rules be evaluated in a separate docket.¹⁶ One commenter also contended that comments concerning the Postal Service’s compliance with Commission orders were not appropriate, arguing that a determination of compliance with past orders cannot be made in a rate adjustment case.¹⁷

The Commission also discussed difficulties in determining whether some pricing structures were workshare discounts subject to the requirements of 39 U.S.C. 3622(e)

¹⁴ United States Postal Service Response to Order No. 1541, November 26, 2012, at 3-4 n.10.

¹⁵ Docket No. R2013-1, Order on Standard Mail Rate Adjustments and Related Mail Classification Changes (Order No. 1573), December 11, 2012 at 5.

¹⁶ See Comment of Pitney Bowes Inc., November 1, 2012 at 8; Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Comments on the United States Postal Service Notice of Market-Dominant Price Adjustment, November 1, 2012, at 8; and Public Representative Comments in Response to United States Postal Service Notice of Market Dominant Price Adjustments, November 1, 2012, at 6. The Commission found that “the Postal Services price cap treatment of promotions is permissible so long as volumes are properly ascribed to the appropriate products.” Order No. 1541 at 18.

¹⁷ Comments of the Association for Postal Commerce, October 31, 2012, at 3.

based on data provided by the Postal Service. Order No. 1541 at 48, 60-61. Docket No. R2013-1 also pointed to the need to revise Commission rules to improve cost calculations. For instance, the Commission acknowledged, in response to a comment concerning the use of older methodologies to calculate cost avoidance for workshare discounts, that “the Commission’s rules may need to be revised to ensure that the most up to date methodologies are incorporated in price adjustment filings.” *Id.* at 11.

III. PROPOSED RULES

The proposed rules included in this Notice of Proposed Rulemaking reflect the Commission’s efforts (1) to clarify the method for calculating the maximum rate adjustment authority available to the Postal Service in any given rate case; (2) to address issues with 39 CFR part 3010 that arose in Docket No. R2013-1; and (3) to address an additional area for improvement identified by the Commission.

A. Clarification of Calculation of Maximum Rate Adjustment Authority

The majority of the proposed changes to the existing rules are intended to clarify how to determine the maximum rate adjustment that can be made in any one rate case. That determination requires a calculation of the annual limitation for the rate case and a calculation of the unused rate adjustment authority available for the rate case.

Defined terms. At the outset, the proposed rules contain a set of definitions intended to aid the Postal Service and postal customers in understanding terms that are used in part 3010. These changes are not merely stylistic. The inconsistent use of terms has played no small part in the confusion about the proper interpretation of part 3010 by the mailing community.¹⁸ The new definitions explain the meaning of commonly used terms, and the proposed rules include conforming changes to ensure that those terms are used consistently. For instance, existing part 3010 variously uses

¹⁸ See, e.g., AMA Response at 11-13, conflating the annual limitation calculated under 39 CFR 3010.21 and 3010.22 with the unused rate adjustment authority calculated under 39 CFR 3010.26.

the terms “rate adjustment,” 39 CFR 3010.4(a), “rate changes,” 39 CFR 3010.7(b), and “rate increases.” 39 CFR 3010.11. The proposed rules consistently use the term “rate adjustment,” mirroring the language of 39 U.S.C. 3622(d). Similarly, the existing rules use “annual limitation,” 39 CFR 3010.2(a), “applicable change in CPI-U,” 39 CFR 3010.3(a), and “inflation-based limitation.” 39 CFR 3010.6(b). The proposed rules use the term “annual limitation” throughout.

The proposed rules replace the term “price cap,” with the term “maximum rate adjustment.” The existing rules use the terms “limitation on rate increase” and “price cap” interchangeably, which leads to confusion. Existing rule 3010.11 is a useful example. The heading purports to describe a “limit on size of rate increases.” Paragraph (a) of existing rule 3010.11 states that “rate increases for each class of market dominant products in any 12-month period are limited.” But paragraph (d) of that same existing rule states that “In any 12-month period the inflation-based limitation combined with the allowable recapture of unused rate authority equals the price cap applicable to each class of mail.” It is unclear whether the price cap referred to in paragraph (d) is the same as the “rate increase” limited under paragraph (a) and described in the heading (and, for that matter, the heading of subpart C of part 3010). Although previous orders have used the term “price cap,” for purposes of the Commission’s rules, the term “maximum rate adjustment” is both clearer and more consistent with 39 U.S.C. 3622(d).

In the proposed rules, the inflation-based limitation on rate adjustments under 39 U.S.C. 3622(d)(1)(A) is referred to as the “annual limitation.” Unused rate adjustment authority, as defined in 39 U.S.C. 3622(d)(2)(C)(i), is also called “unused rate adjustment authority” in the proposed rules. The total limit on the amount of a rate adjustment that can be made for a class in any one rate case includes both the “annual limitation” and the “unused rate adjustment authority,” and is called the “maximum rate adjustment.”

Calculation of annual limitation. The Commission proposes amendments to rules 3010.21 and 3010.22 in response to confusion in Docket No. R2011-2 concerning the appropriate method for calculating the annual limitation when rate cases are more than 12 months apart. *Supra*; Order No. 606 at 6-19. Depending on the length of time that has elapsed between rate cases, the annual limitation will be either a full year limitation or a partial year limitation. Proposed rule 3010.21 clarifies that when notices of rate adjustment are 12 or more months apart, as was the case in Docket No. R2011-2, a full year limitation is calculated in accordance with 39 CFR 3010.21. This full year limitation is calculated using only the most recent 12 monthly CPI-U values, regardless of whether more than 12 months have elapsed since the last rate case. Proposed rule 3010.22 clarifies that when notices of rate adjustment are less than 12 months apart, a partial year limitation is calculated in accordance with 39 CFR 3010.22. In addition, both proposed rules contain provisions regarding the source of CPI-U data, taken from existing rule 3010.12, a change intended to assist postal customers and the Postal Service in identifying the correct source of data for the calculation of the annual limitation.

Calculation of unused rate adjustment authority. Confusion concerning the calculation of unused rate adjustment authority in cases where notices of rate adjustments were 12 or more months apart also surfaced in Docket No. R2011-2. Although the annual limitation in such a case takes into account only CPI-U data from the previous 12 months, unused rate adjustment authority accrues over the entire period between notices of rate adjustments. Proposed rule 3010.26 seeks to clarify the manner in which unused rate adjustment authority is calculated, both in cases where notices of rate adjustments are 12 months or less apart and in cases where notices of rate adjustments are more than 12 months apart. Annual unused rate adjustment authority is calculated in both cases. However, in a case where notices of rate adjustment are filed more than 12 months apart, interim unused rate adjustment authority is also calculated. In such a case, annual unused rate adjustment authority is

generated during the 12-month period ending on the date the second notice of rate adjustment is filed. Interim unused rate adjustment authority is generated during the period beginning on the date the first notice of rate adjustment is filed and ending on the day before the date that is 12 months before the date on which the second notice of rate adjustment is filed. The proposed rule also specifies that interim rate adjustment authority may be used in the same case in which it is generated and that all unused rate adjustment authority lapses 5 years after the filing of the notice of rate adjustment leading to its calculation.

Organization. To improve the organization of part 3010, the proposed rules move sections 3010.11 and 3010.12 from subpart B (which is largely concerned with general procedural requirements) to subpart C (which is a more detailed set of requirements for calculating the maximum rate adjustment). This change is designed to assist postal customers and the Postal Service in understanding how the maximum rate adjustment is calculated.

Calculation of maximum unused rate adjustment authority. Proposed rule 3010.28 brings the Commission's rules concerning the use of unused rate adjustment authority in line with the requirements of 39 U.S.C. 3622(d)(2)(C)(iii)(IV). As discussed above, the Commission's rules did not anticipate extended periods of declining CPI-U. Proposed rule 3010.28 specifies that the maximum unused rate adjustment authority that may be used in a Type 1-A, Type 1-B, or Type 2 rate adjustment is 2 percentage points. This is true even in situations where the sum of all 5 years of available unused rate adjustment authority is less than 2 percentage points.

Exhaustion of annual limitation. Finally, the proposed rules include a change to 39 CFR 3010.25 to specify that unused rate adjustment authority may only be used after the entire annual limitation is exhausted. This change is consistent with past Commission practice.

B. Changes Addressing Issues in Docket No. R2013-1

Several of the proposed rules reflect the Commission's efforts to address issues that arose during Docket No. R2013-1. Those proposed rules are discussed in this section.

Calculation of percentage change in rates for products. In Docket No. R2013-1, the Postal Service used different methods to calculate the percentage change in rates for Standard Mail Flats and the percentage change in rates for the Standard Mail class as a whole. Order No. 1541 at 36, 46. The sum of the rate adjustments for all products within the Standard Mail class, as calculated by the Postal Service, exceeded the actual rate adjustment requested by the Postal Service for the class. *Id.* at 46 n.61. The Commission explained, "While the Commission rules do not specifically address the method to calculate a percentage change in rates by product, the Postal Service should use the same methodology as prescribed for a market dominant class of mail when calculating a percentage change for a market dominant product." *Id.* at 46. Proposed rule 3010.23(b) seeks to re-state that Commission directive in the Commission's rules.

Adjustments to billing determinants. The Commission has repeatedly emphasized that, for purposes of calculating a percentage change in rates, adjustments to billing determinants should not be based on anticipated changes in mailer behavior. Order No. 1541 at 17, 37; Order No. 606 at 19. This position is consistent with the existing rule 3010.23(d), which requires that "[w]henver possible, adjustments shall be based on known mail characteristics." Proposed rule 3010.23(d) expresses more strongly the Commission's preference for using historical data in the calculation of percentage change in rates by prohibiting the use of data based on anticipated changes in mailer behavior.

Temporary promotional rates and incentive programs. Paragraphs (e) and (f) of proposed rule 3010.23 reflect past Postal Service practice concerning the inclusion of temporary promotional rates and incentive programs in the calculation of percentage

change in rates. In past rate cases, the Postal Service chose not to include temporary promotional rates and incentive programs in the calculation of percentage change in rates when those rates and programs resulted in overall rate decreases. Order No. 1541 at 18. Proposed rule 3010.23(e) states the Commission's approval of this practice. Proposed rule 3010.23(f) explains how the Commission expects rates to be calculated in cases where the Postal Service chooses to begin to include a temporary promotional rate or incentive program in a calculation of percentage change in rates after previously excluding the rate or program from the calculation pursuant to proposed rule 3010.23(e).

Content of comments. In Docket No. R2013-1, interested persons submitted comments concerning the Postal Service's compliance with orders and directives of the Commission, as well as with statutory provisions other than those contained in subchapter 1 of chapter 36 of title 39, United States Code. See, e.g., Order No. 1541 at 33-34. One interested person objected to the Commission considering such comments. *Id.* at 35. Proposed rule 3010.11(c) clarifies the Commission's position that such comments are appropriately before the Commission in a rate case. *Id.*

Workshare discounts. The Commission has the authority to define workshare discounts. 39 U.S.C. 3622(e). In order to exercise that authority, the Commission requires the Postal Service to include information concerning workshare discounts in notices of rate adjustment. 39 CFR 3010.14. However, in Docket No. R2013-1, the Commission had reason to believe that the Postal Service's determination of what constituted a workshare discount might differ from the Commission's determination. Order No. 1541 at 47-48 and 61. In order to allow the Commission to determine which discounts and surcharges offered by the Postal Service constitute workshare discounts within the meaning of 39 U.S.C. 3622(e), proposed rule 3010.12(c) would require that the Postal Service submit certain supporting information concerning all discounts and surcharges.

Calculation of costs, avoided costs, volumes, and revenues. Proposed rule 3010.12(e) would require the Postal Service to calculate costs, avoided costs, volumes, and revenues using the most recent analytical principles approved by the Commission, rather than the principles used in the most recent Annual Compliance Report. Initially, the Postal Service filed notices of rate adjustments more or less contemporaneously with the Annual Compliance Report. However, in recent years, the Postal Service has filed notices of rate adjustments at other intervals between Annual Compliance Reports. Often, those notices are filed after the Commission has approved changes to the analytical principles used for the most recent Annual Compliance Report. The proposed rule reflects the Commission's position that the Postal Service will be able to make more accurate calculations in notices of rate adjustments if its calculations use the most recent approved analytical principles. See Order No. 1541 at 11.

C. Additional Issue

The Commission has identified an additional change that the Commission believes would improve the application of part 3010 to rate cases. The Commission recently conducted proceedings concerning an amended notice of rate adjustment filing in Docket No. R2013-1. In those proceedings, a 7-day period for public comment was sufficient. Proposed rule 3010.13(g) reflects this experience by providing 7, rather than 10, days for comment in such proceedings.

IV. COMMENTS REQUESTED

Interested persons are invited to provide written comments and suggestions to clarify or improve part 3010 of the Commission's regulations. These comments may address the changes discussed in this Order, and they also may suggest additional changes. Comments may include specific language amending part 3010.

Comments are due no later than 30 days after the date of publication of this notice in the *Federal Register*. All comments and suggestions received will be available

for review on the Commission's website, <http://www.prc.gov>. Interested persons are further invited to review the submissions and provide follow-up comments and suggestions within 15 additional days (that is, within 45 days of the publication of this notice in the *Federal Register*).

Emmett Rand Costich is designated the Public Representative to represent the interests of the general public in this docket.

V. EXPLANATION OF PROPOSED RULES

Attached to this Order are proposed rules to clarify and improve the manner in which part 3010 implements statutory directives and policies previously expressed in Commission orders. Following is a section-by-section analysis of the proposed rules.

Proposed rule 3010.1 defines the terms "annual limitation," "class," "maximum rate adjustment," "Type 1-A rate adjustment," "Type 1-B rate adjustment," "Type 2 rate adjustment," "Type 3 rate adjustment," and "unused rate adjustment authority."

Proposed rule 3010.2 revises a statutory reference and is revised to ensure consistent use of terms.

Proposed rule 3010.3 is revised to ensure consistent use of terms and to move the requirement that the Postal Service maintain a schedule tracking unused rate adjustment authority to proposed rule 3010.26(f).

Proposed rule 3010.4 is revised to ensure consistent use of terms.

Proposed rule 3010.5 strikes duplicative provisions.

Proposed rule 3010.6 is revised to ensure consistent use of terms.

Proposed rule 3010.7 is revised to ensure consistent use of terms.

Proposed rule 3010.8(d) strikes an obsolete transition requirement.

Proposed rule 3010.8 is revised throughout to ensure consistent use of terms.

Proposed rule 3010.10 is revised to ensure consistent use of terms.

Existing rules 3010.11 and 3010.12 are stricken. The content of these rules is included in proposed rules 3010.20, 3010.21, and 3010.22.

Proposed rule 3010.11(c) clarifies that comments on compliance with relevant statutory provisions and Commission orders and directives are permitted.

Proposed rule 3010.11(g) changes the comment period from 10 days to 7 days and provides that comments on amended notices may address subjects described in paragraph (c).

Proposed rule 3010.11 is revised throughout to ensure consistent use of terms.

Proposed rule 3010.12 is revised by amending paragraph (b)(5) and adding a paragraph (e) to require that cost, avoided cost, volume, and revenue figures be developed from the most recent approved analytical principles. Proposed rule 3010.12(c) is revised to require the filing of information concerning all new discounts and surcharges.

Proposed rule 3010.12 is revised to ensure consistent use of terms and to strike paragraph headings.

Proposed rule 3010.20 is revised to incorporate provisions from existing rule 3010.11 and to ensure the consistent use of terms.

Proposed rule 3010.21 is revised to specify that it applies to rate adjustments filed 12 or more months apart, to incorporate provisions from existing rule 3010.12, and to ensure the consistent use of terms.

Proposed rule 3010.22 is revised to specify that it applies to rate adjustments filed less than 12 months apart, to incorporate provisions from existing rule 3010.12, and to ensure the consistent use of terms.

Proposed rule 3010.23(b) is revised to specify that the percentage change in rates for a product is calculated in the same manner as for a class.

Proposed rule 3010.23(d) is revised to specify that adjustments to billing determinants may not be based on anticipated changes in mailer behavior.

Proposed rule 3010.23(e) allows the exclusion of temporary promotional rates and incentive programs from percentage change in rates calculations if they result in overall rate decreases.

Proposed rule 3010.23(f) clarifies the manner in which the current rate for a rate cell is calculated.

Proposed rule 3010.23 is revised throughout to ensure consistent use of terms.

Proposed rule 3010.24 is revised to specify that it applies to calculations under proposed rule 3010.23.

Proposed rule 3010.25 is revised to clarify that unused rate adjustment authority may only be applied after applying the annual limitation.

Proposed rule 3010.26 is revised clarify the manner in which unused rate adjustment authority is calculated.

Proposed rule 3010.27 is revised to ensure the consistent use of terms.

Proposed rule 3010.28 is revised to conform with 39 U.S.C. 3622(d)(2)(C)(iii)(IV) and to ensure the consistent use of terms.

Existing rule 3010.29 is stricken as an obsolete transition provision.

Proposed rule 3010.42 is revised to use consistent formatting and to ensure the consistent use of terms.

Proposed rule 3010.43 is revised to specify that both a plan and a report are required and that the net financial position of the Postal Service should be reported.

Proposed rule 3010.44 is revised to ensure consistent use of terms.

The heading of subpart E is revised to ensure consistent use of terms.

Proposed rule 3010.60 is revised to ensure terms are consistent with 39 U.S.C. 3622(d) and to ensure consistent use of terms.

Proposed rule 3010.61 is revised to ensure terms are consistent with 39 U.S.C. 3622(d) and to ensure consistent use of terms.

Proposed rule 3010.63 is revised to be consistent with proposed rule 3010.14(d) and to ensure the consistent use of terms.

Proposed rule 3010.65 is revised to ensure the consistent use of terms.

Proposed rule 3010.66 is revised to ensure the consistent use of terms.

VI. ORDERING PARAGRAPHS

It is ordered:

1. Docket No. RM2011-2 is closed.
2. Docket No. RM2013-2 is established for the purpose of receiving comments with respect to the proposed rules attached to this Notice.
3. Interested persons may submit comments no later than 30 days after the date of publication of this notice in the *Federal Register*.

4. Reply comments may be filed no later than 45 days after the date of publication of this notice in the *Federal Register*.
5. Emmett Rand Costich is designated the Public Representative to represent the interests of the general public in this docket.
6. The Secretary shall arrange for publication of this Notice in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary

Proposed Price Cap Rule Changes

March 22, 2013

Subpart A—General Provisions

§3010.1 Definitions.

In this subpart:

(a) *Annual limitation* means:

(1) in the case of a notice of a Type 1-A or Type 1-B rate adjustment filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to §3010.21; and

(2) in the case of a notice of a Type 1-A or Type 1-B rate adjustment filed less than 12 months after the last Type 1-A or Type 1-B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to §3010.22.

(b) *Class* means a class of market dominant products.

(c) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1-A or Type 1-B rate adjustment. The maximum rate adjustment is calculated in accordance with §3010.20.

(d) *Type 1-A rate adjustment* means a rate adjustment described in §3010.4.

(e) *Type 1-B rate adjustment* means a rate adjustment described in §3010.5.

(f) *Type 2 rate adjustment* means a rate adjustment described in §3010.6.

(g) *Type 3 rate adjustment* means a rate adjustment described in §3010.7.

(h) *Unused rate adjustment authority* means the percentage calculated pursuant to §3010.26.

§ 3010.2 Applicability.

The rules in this part implement provisions in subchapter I of chapter 36 of title 39, United States Code, establishing ratesetting policies and procedures for market dominant products. With the exception of Type 3 rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Type 3 rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

§ 3010.3 Types of rate adjustments for market dominant products.

(a) There are four types of rate adjustments for market dominant products. A Type 1–A rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(D). A Type 1–B rate adjustment is authorized under 39 U.S.C. 3622(d)(2)(C). A Type 2 rate adjustment is authorized under 39 U.S.C. 3622(c)(10). A Type 3 rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(E).

(b) The Postal Service may combine Type 1–A, Type 1–B, and Type 2 rate adjustments for purposes of filing with the Commission.

§ 3010.4 Type 1–A rate adjustment—in general.

(a) A Type 1–A rate adjustment is a rate adjustment based on the annual limitation.

(b) A Type 1–A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1–A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment for that class, subject to the expiration terms in §3010.26(e).

§ 3010.5 Type 1–B rate adjustment—in general.

A Type 1–B rate adjustment is a rate adjustment which uses unused rate adjustment authority in whole or in part.

§ 3010.6 Type 2 rate adjustment—in general.

A Type 2 rate adjustment is based on a negotiated service agreement. A negotiated service agreement entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

§ 3010.7 Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a rate adjustment that is authorized only when justified by exceptional or extraordinary circumstances.

(b) A Type 3 rate adjustment is not subject to the annual limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

§ 3010.8 Schedule for Regular and Predictable Rate Adjustments.

- (a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, [http:// www.prc.gov](http://www.prc.gov) .
- (b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1–A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.
- (c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.
- (d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.
- (e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.
- (f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1–A filing. No explanation is required for variations involving smaller than predicted rate adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1–A and 1–B Rate Adjustments)

§ 3010.10 Procedures.

- (a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1–A or Type 1–B rate adjustment for a class shall:
- (1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and
 - (2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.
- (b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended rate adjustments include classification changes or operations changes likely to have a material impact on mailers.

§ 3010.11 Proceedings for Type 1–A and Type 1–B rate adjustment filings.

(a) The Commission will establish a docket for each notice of Type 1-A or Type 1-B rate adjustment filing, promptly publish notice of the filing in the Federal Register, and post the filing on its Web site. The notice shall include:

- (1) The general nature of the proceeding;
- (2) A reference to legal authority under which the proceeding is to be conducted;
- (3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;
- (4) The identification of an officer of the Commission to represent the interests of the general public in the docket;
- (5) A period of 20 days from the date of the filing for public comment; and
- (6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter 1:

(1) Whether the planned rate adjustments measured using the formula established in §3010.23(b) are at or below the annual limitation calculated under §3010.21 or §3010.22, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in §3010.23(b) are at or below the limitations established in §3010.28.

(c) Public comments may also address other relevant statutory provisions and applicable Commission orders and directives.

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under §3010.21 or §3010.22, as applicable, and the limitations set forth in §3010.28 and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(e) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(f) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(g) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 7 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment should address the subjects identified in paragraph (b) and may address the subjects identified in paragraph (c).

(h) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(i) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(j) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(k) A Commission finding that a planned Type 1-A or Type 1-B rate adjustment is in compliance with the annual limitation calculated under §3010.21 or §3010.22, as applicable; the limitations set forth in §3010.28; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1-A or Type 1-B rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter 1 is provisional and subject to subsequent review.

§ 3010.12 Contents of notice of rate adjustment.

(a).A Type 1-A or Type 1-B notice of rate adjustment must include the following information:

(1) A schedule of the planned rates;

(2) The planned effective date(s) of the planned rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) The notice of rate adjustment shall be accompanied by:

(1) The annual limitation calculated as required by §3010.21 or §3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown, and all input values including all relevant CPI-U values are listed with citations to the original sources;

(2) A schedule showing unused rate adjustment authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown;

(3) The percentage change in rates for each class of mail calculated as required by §3010.23. This information must be supported by workpapers in which all calculations are shown, and all input values including current rates, new rates, and billing determinants are listed with citations to the original sources;

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by §3010.26. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment;

(5) A schedule of the workshare discounts included in the planned rates, and a companion schedule listing the avoided costs that underlie each such discount. This information must be supported by workpapers in which all calculations are shown, and all input values are listed with citations to the original sources;

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs;

(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c);

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629;

(9) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments; and

(10) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

(c) Whenever the Postal Service establishes a new discount or surcharge, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount or surcharge;

(2) All data, economic analyses, and other information relied on to justify the discount or surcharge; and

(3) In the case of a discount, a certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d). The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by §3010.27. All calculations are to be shown, including citations to the original sources.

(e) All cost, avoided cost, volume, and revenue figures submitted with the notice of rate adjustment shall be developed from the most recent applicable Commission approved analytical principles.

Subpart C—Rules for Determining the Maximum Rate Adjustment

§ 3010.20 Calculation of maximum rate adjustment.

- (a) Rate adjustments for each class of market dominant products in any 12-month period are limited.
- (b) Rates of general applicability are subject to an inflation-based annual limitation computed using CPI-U values as detailed in §3010.21(a) and §3010.22(a).
- (c) An exception to the annual limitation allows a limited annual recapture of unused rate adjustment authority. The amount of unused rate adjustment authority is measured separately for each class.
- (d) In any 12-month period the maximum rate adjustment applicable to a class is:
 - (1) for a Type 1-A notice of rate adjustment, the annual limitation for the class; and
 - (2) for a combined Type 1-A and Type 1-B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under §3010.28.

§ 3010.21 Calculation of annual limitation when notices of rate adjustment are 12 or more months apart.

- (a) The monthly CPI-U values needed for the calculation of the full year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”
- (b) If a notice of a Type 1-A or Type 1-B rate adjustment is filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment applicable to a class, then the calculation of an annual limitation for the class (referred to as the *full year limitation*) involves three steps. First, a simple average CPI-U index is calculated by summing the most recently available 12 monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI-U index is similarly calculated by summing the 12 monthly CPI-U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating a full year limitation for a notice of rate adjustment filed 12 or more months after the last notice is as follows: Full Year Limitation = (Recent Average/Base Average)–1.

[74 FR 49327, Sept. 28, 2009]

§ 3010.22 Calculation of annual limitation when notices of rate adjustment are less than 12 months apart.

(a) The monthly CPI–U values needed for the calculation of the partial year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1-A or Type 1-B rate adjustment is filed less than 12 months after the last Type 1–A or Type 1–B notice of rate adjustment applicable to a class, then the annual limitation for the class (referred to as the *partial year limitation*) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(c) The applicable partial year limitation is calculated in two steps. First, a simple average CPI–U index is calculated by summing the 12 most recently available monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(d) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 12 months after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average)–1.

[74 FR 49327, Sept. 28, 2009]

§ 3010.23 Calculation of percentage change in rates.

(a) In this section, the term *rate cell* means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. A seasonal or temporary rate shall be identified and treated as a rate cell separate and distinct from the corresponding non-seasonal or permanent rate.

(b) For each class of mail and product within the class, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate, as defined in paragraph (f) of this section, for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(c) The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left(\frac{\sum_{i=1}^N (R_{i,n}) (V_i)}{\sum_{i=1}^N (R_{i,c}) (V_i)} \right) - 1$$

Where,

N = number of rate cells in the class

i = denotes a rate cell (i = 1, 2, ..., N)

R_{i,n} = planned rate of rate cell i

R_{i,c} = current rate of rate cell i

V_i = volume of rate cell i

(d) The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. Whenever possible, adjustments shall be based on known mail characteristics. Adjustments to billing determinants may not be based on anticipated changes in mailer behavior. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

(e) *Temporary Promotional Rates and Incentive Programs.* The Postal Service may exclude temporary promotional rates and incentive programs from its percentage change in rates calculations if the temporary promotional rates and incentive programs result in overall rate decreases.

(f) *Current Rate.* For purposes of this section, the current rate for a rate cell is the rate that corresponds to the billing determinants described in paragraph (d) for the rate cell. For rate cells that include a temporary promotional rate or incentive program that was previously excluded under paragraph (e), the current rate is the generally applicable rate for the rate cell at the time of the filing of the notice of rate adjustment, not the temporary promotional rate or incentive program rate in effect for the rate cell at such time.

§ 3010.24 Treatment of volume associated with negotiated service agreements.

(a) Mail volumes sent at rates under negotiated service agreements are to be included in the calculation of percentage change in rates under §3010.23 as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (e.g. , because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements in the calculation of the percentage change in rates and provide the rationale for its assumptions.

§ 3010.25 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to §3010.21 or §3010.22.

§ 3010.26 Calculation of unused rate adjustment authority.

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1-A and Type 1-B rate adjustments. When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, the unused rate adjustment authority is the annual unused rate adjustment authority calculated under paragraph (b). When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, unused rate adjustment authority is the sum of the annual unused rate adjustment authority calculated under paragraph (b) plus the interim unused rate adjustment authority calculated under paragraph (c)(2), less any interim unused rate adjustment authority used in accordance with paragraph (d).

(b) When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to §3010.21 or §3010.22 and the actual percentage change in rates for the class.

(c) (1) When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, annual unused rate adjustment authority will be calculated for the 12-month period ending on the date on which the second notice is filed and interim unused rate adjustment authority will be calculated for the period beginning on the date the first notice is filed and ending on the day before the date that is 12 months before the second notice is filed.

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to §3010.21(a)) divided by the Recent Average utilized in the

first notice of rate adjustment (as developed pursuant to §3010.21(a)) and subtracting 1 from the quotient. The result is expressed as a percentage.

(d) Interim unused rate adjustment authority may be used to make a rate adjustment pursuant to the second of two notices of rate adjustment filed more than 12 months apart.

(e) Unused rate adjustment authority lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

(f) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority for that class.

§ 3010.27 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the annual limitation shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

§ 3010.28 Maximum size of unused rate adjustment authority rate adjustments.

Unused rate adjustment authority used to make a Type 1-B rate adjustment for any class in any 12-month period may not exceed 2 percentage points.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

§ 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

§ 3010.41 Procedures.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

§ 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

Whenever the Postal Service proposes to establish or change rates, fees, or the Mail Classification Schedule based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement that shall include at a minimum:

- (a) A copy of the negotiated service agreement;
- (b) The planned effective date(s) of the planned rates;
- (c) A representation or evidence that public notice of the planned rate adjustments has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and
- (d) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.
- (e) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.
- (f) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:
 - (1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;
 - (2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;
 - (3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement; and
 - (4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.

(f) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

§ 3010.43 Data collection plan and report.

(a) The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10).

(b) A data report under the plan is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(1) The change in net financial position of the Postal Service as a result of the agreement. This calculation shall include for each year of the agreement:

(A) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(B) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(C) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(2) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(3) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

§ 3010.44 Proceedings for Type 2 rate adjustments

(a) The Commission will establish a docket for each notice of Type 2 rate adjustment filed, promptly publish notice of the filing in the Federal Register, and post the filing on its Web site. The notice shall include:

- (1) The general nature of the proceeding;
 - (2) A reference to legal authority under which the proceeding is to be conducted;
 - (3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;
 - (4) The identification of an officer of the Commission to represent the interests of the general public in the docket;
 - (5) A period of 10 days from the date of the filing for public comment; and
 - (6) Such other information as the Commission deems appropriate.
- (b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.
- (c) Commission findings that a planned Type 2 rate adjustment is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

§ 3010.60 Applicability.

The Postal Service may request to adjust rates for market dominant products in excess of the maximum rate adjustment due to extraordinary or exceptional circumstances. In this subpart, such requests are referred to as *exigent requests*.

§ 3010.61 Contents of exigent requests.

- (a) Each exigent request shall include the following:
- (1) A schedule of the proposed rates;
 - (2) Calculations quantifying the increase for each affected product and class;
 - (3) A full discussion of the extraordinary or exceptional circumstances giving rise to the request, and a complete explanation of how both the requested overall increase, and the specific rate adjustments requested, relate to those circumstances;
 - (4) A full discussion of why the requested rate adjustments are necessary to enable the Postal Service, under best practices of honest, efficient and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent rate adjustments in whole or in part;

(7) An analysis of the circumstances giving rise to the exigent request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in §3010.61(a).

§ 3010.62 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by §3010.61 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate increases requested.

§ 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate adjustment authority available as of the date of the request for each class of mail and the available amount for each of the preceding 5 years

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in §3010.28.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate adjustments in excess of the maximum rate adjustment for any class of mail.

§ 3010.64 Expeditious treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

§ 3010.65 Special procedures applicable to exigent requests.

(a) The Commission will establish a docket for each exigent request, promptly publish notice of the request in the Federal Register, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

- (2) A reference to legal authority to which the proceeding is to be conducted;
 - (3) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;
 - (4) The identification of an officer of the Commission to represent the interests of the general public in the docket;
 - (5) A specified period for public comment; and
 - (6) Such other information as the Commission deems appropriate.
- (b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information provided in response to the topics specified in §3010.61(a).
- (c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with §3001.9, and will become part of the administrative record of the proceeding.
- (d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.
- (e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.
- (f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:
- (1) The sufficiency of the justification for an exigent rate increase;
 - (2) The adequacy of the justification for increases in the amounts requested by the Postal Service; and
 - (3) Whether the specific rate adjustments requested are reasonable and equitable.
- (g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of the filing of an exigent request.